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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/894,244	06/27/2001	Peng Li	12583.2USCI	5651
23552	7590	10/15/2003	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			MILLER, CRAIG S	
			ART UNIT	PAPER NUMBER
			2857	

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	09/894,244	Applicant(s)	Li et al.
Examiner	CRAIG STEVEN MILLER	Group Art Unit	2857

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

Responsive to communication(s) filed on 24 July 2003

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

Claim(s) 18-187 is/are pending in the application.

Of the above claim(s) 24-35 and 42-186 is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 18-23, 36-41, 186 and 187 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

### Application Papers

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All  Some\*  None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

Copies of the certified copies of the priority documents have been received  
in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

## Office Action Summary

1. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper time-wise extension of the "*right to exclude*" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 18-23, 36-41, 186 and 187 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 6, 9-11, 1, 2, 6, 9-11, 1 and 1, respectively, of U.S. Patent No. 6,298,315 (hereafter referred to as '315).

As to claims 18, 36, 186 and 187, said claims are identical to claim 1 of '315 with the exception that the instant invention specifies that the histogram is specifically defined from transitions intended for an ideal time but occurring at a non-ideal time. The specification of '315 discloses (col. 3 line 20+) that one of the expected characteristics of interest, jitter, is defined in serial data communication as the difference of data transition times (non-ideal) relative to ideal bit clock active transition times and that jitter in digital systems is the difference between an ideal clock period (ideal) and an actual clock period (non-ideal). Because '315 discloses such ideal versus non-ideal analysis as being a proper exercise of claim 1 of '315 and because '315 admits (col. 1 lines 22+) that such data is known to be of interest in general, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use ideal versus non-ideal transition values within the analysis of '315 claim 1 so as to receive the expected

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benefits derived there from such as enhanced system flexibility absent a showing of unexpected results or synergistic effect from any particular claimed combination.

As to claims 19 and 37, said claims are essentially identical to claim 2 of '315 except '315 does not specify that the histogram represents actual timing of the transitions. Because '315 as indicated above indicates that actual times are characteristics of interest, it would be obvious to one of ordinary skill in the art at the time the invention was made that actual timing distributions are inherently required to be fitted to properly execute the jitter analysis of claim 1 of '315 as to receive the expected benefits derived therefrom as stated above, absent a showing of unexpected results or synergistic effect from any particular claimed combination.

As to claims 20-23 and 38-41, said claims do not materially distinguish over '315 claims 2, 6, 9-11, 2, 6 and 9-11, respectively in view of the rejections listed above.

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bott (4,676,641) discloses size distribution analysis.

Lawrence *et al.* (4,831,637) discloses timing jitter cancellation.

Box *et al.* (4,908,784) discloses asynchronous time measurement.

Goodenough *et al.* (5,068,788) discloses calculating histograms.

4. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Craig Steven Miller whose telephone number is (703) 305-9730. Art Unit facsimile services are now available at (703) 308-7722.

The Examiner can normally be reached on Mondays, Tuesdays and Thursdays from 07:30am-4:00pm EDT. Should repeated attempts to reach the Examiner be unsuccessful, the Examiner's Supervisor, Marc Hoff may be reached at (703) 308-1677.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

Craig Steven Miller (ss)  
24 September 2003

  
MARC S. HOFF  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800